

IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF TEXAS  
SAN ANTONIO DIVISION

LA UNION DEL PUEBLO ENTERO,  
ET AL,

PLAINTIFFS,

vs.

GREGORY W. ABBOTT, ET AL,

DEFENDANTS.

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DOCKET NO. 5:21-CV-844-XR

TRANSCRIPT OF MOTION PROCEEDINGS  
BEFORE THE HONORABLE XAVIER RODRIGUEZ  
UNITED STATES DISTRICT JUDGE  
MARCH 7, 2023

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GIGI SIMCOX, RMR, CRR  
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UNITED STATES DISTRICT COURT  
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1       *(San Antonio, Texas; March 7, 2023, at 4:00 p.m., in open*  
2 *court and Zoom videoconference.)*

3           THE COURT: Let's call La Union del Pueblo Entero  
4 versus Gregg Abbott, 21 civil 844.

5           Who do we have for the plaintiffs?

6           MISS PERALES: For LUPE plaintiffs, Your Honor, Nina  
7 Perales. And with me today in the courtroom, Samantha Selma  
8 [phonetic], Julia Longoria, Fatima Menendez, and Kenneth  
9 Parreno.

10          THE COURT: Thank you.

11          Anyone else, appearances?

12          MISS YUN: Jennifer Yun for the United States.

13          THE COURT: Anyone else?

14          MR. DOLLING: Zachary Dolling on behalf of the OCA  
15 plaintiffs.

16          THE COURT: And for the State?

17          MR. HILTON: Good afternoon, Your Honor, Chris Hilton  
18 from the Attorney General's Office for the State defendants.  
19 There may be some other AG folks on Zoom, but I'll be the only  
20 one speaking today.

21          THE COURT: Who is representing the Harris County  
22 Republican Party?

23          MR. HILTON: That's John Gore.

24          MR. GORE: Good afternoon, Your Honor.

25          THE COURT: Mr. Gore, okay.

1 And do we have anyone else on the line representing  
2 any of the other defendants?

3 MISS EISNER: Good afternoon, Your Honor, Marina  
4 Eisner representing El Paso County Elections Administrator  
5 Lisa Wise from State's United Democracy Center.

6 THE COURT: Thank you.

7 MR. LOUK: David Louk from Cooley LLP also  
8 representing defendant Wise from El Paso County.

9 THE COURT: Thank you.

10 MR. STOOL: Your Honor, this is Ben Stool from Dallas  
11 County representing the Dallas County Elections Administrator  
12 and the Dallas County District Attorney.

13 THE COURT: Thank you.

14 So we are here on --

15 MR. NELSON: Your Honor --

16 THE COURT: Yes.

17 MR. NELSON: I'm sorry.

18 Tony Nelson, Assistant Travis County Attorney for the  
19 Travis County District Attorney and Travis County Clerk.

20 THE COURT: Thank you. Sorry, so the way it is being  
21 displayed, I can't see that there's more people on the Zoom.

22 MISS TOGNETTI: Also, Leigh Ann Tognetti from the  
23 Hidalgo County District Attorney's Office representing the  
24 Hidalgo County Election Administrator Hilda Salinas.

25 THE COURT: Thank you.

1 Anybody else out there? No one else.

2 MISS CUBRIEL: Your Honor, Lisa Cubriel.

3 THE COURT: Thank you; for Bexar County.

4 MISS CUBRIEL: I'm here on -- yes, Your Honor. I  
5 injured my ankle or I would have been there in person.

6 THE COURT: Thank you. You didn't have much of a  
7 walk to go.

8 MR. NICHOLS: Your Honor, Eric Nichols. We're not  
9 involved in the dispute today, but I represent the Harris  
10 County District Attorney's Office.

11 THE COURT: Thank you. Okay.

12 MR. BIRRING: Your Honor, Sameer Birring is here for  
13 the Harris County Attorney's Office for the Harris County  
14 Elections Administrator. I believe Jonathan Fombonne is also  
15 online from the Harris County Attorney's Office.

16 MR. FOMBONNE: Yes, Your Honor, I'm here.

17 THE COURT: Okay. So we have two matters here, a  
18 motion to compel regarding documents that Mr. Vera may or may  
19 not have, and a deposition that took place, and then a motion  
20 to clarify the scheduling order.

21 So first thing, let's take up the Vera deposition.

22 Who served as Mr. Vera's attorney during that  
23 deposition?

24 MISS PERALES: Your Honor, that counsel is named  
25 Mr. Andy Taylor.

1 THE COURT: Mr. Gore, is Mr. Taylor co-counsel with  
2 you, or how does that work?

3 MR. GORE: Mr. Taylor is not co-counsel with us. I  
4 represent the Harris County Republican Party and the other  
5 intervenor defendant and Mr. Taylor represents Mr. Vera.

6 THE COURT: So which attorney from either the  
7 intervenor, the State defendants, or Mr. Taylor asserted the  
8 legislative privilege?

9 MR. GORE: The legislative privilege was asserted by  
10 the State defendants during Mr. Vera's deposition.

11 THE COURT: Mr. Hilton, were you the lawyer asserting  
12 those privileges?

13 MR. HILTON: Your Honor, I was not the attorney  
14 asserting those privileges. That was Mr. Will Wassdorf.

15 But just a point of clarification, the -- we also  
16 represent these legislators for many other purposes and  
17 include some of them in this case, so the assertion of this  
18 privilege, really more by the attorney than the State  
19 defendant themselves.

20 We filed a brief shortly before the hearing today,  
21 just to get something on file with --

22 THE COURT: No, sir. Wait a minute. Let's wait  
23 here.

24 So at the time of Mr. Vera's deposition, did any of  
25 the individual legislators assert the privilege?

1           MR. HILTON: I don't understand the question. They  
2 weren't at the deposition.

3           THE COURT: No, sir. So the question is real simple.  
4           The legislative privilege is only to be asserted by a  
5 legislator. The question is which, if any, legislators  
6 asserted that privilege during the time that Mr. Vera was  
7 being deposed.

8           MR. HILTON: If I understand your question, which of  
9 those legislators had one of their attorneys there, you know,  
10 asserting privilege exclusively on their behalf, then the  
11 answer would be they did not have an attorney at the  
12 deposition.

13           THE COURT: So the answer is neither the legislator  
14 nor any attorney representing a legislator invoked the  
15 legislative privilege, is that correct?

16           MR. HILTON: With the caveat that I provided earlier  
17 that we do represent these legislators both in this and other  
18 litigation for many purposes, but, yes, Mr. Wassdorf was there  
19 as the attorney for the State defendants.

20           THE COURT: For the State defendants, not the  
21 legislators?

22           MR. HILTON: Yes, Your Honor.

23           THE COURT: So there was no meritorious invocation of  
24 the legislative privilege for a variety of reasons.

25           I've already ruled on any number of occasions that



1 the privilege is only applicable to a legislator and that the  
2 legislative privilege can be waived by third parties entering  
3 into that relationship that only belongs between a legislator  
4 and their staff member.

5 So Mr. Wassdorf, by invoking the legislative  
6 privilege, was in violation of my previous orders asserting  
7 groundless objections. So the remedy for all of that is that  
8 Mr. Vera will be redeposed.

9 He will be redeposed at the expense -- so now, I was  
10 going to impose that upon the Harris Republican Party, but  
11 since from what I understand the Harris Republican Party is  
12 not responsible for these meritless objections, it was the  
13 State defendants. Cost of the second deposition of Mr. Vera  
14 will be borne by the State of Texas Attorney General's Office.

15 In addition, any costs associated by the plaintiffs  
16 in filing this motion to compel will be assessed against the  
17 State defendants, as well as any cost of reasonable attorneys  
18 fees for attendance of today's hearing.

19 Now let's talk about the documents that Mr. Vera or  
20 the Harris County Republican Party should have tendered.

21 So, Mr. Gore, did you ever instruct Mr. Vera to  
22 search for any documents that were responsive in Requests for  
23 Productions 1 or 3?

24 MR. GORE: Your Honor, we searched our files at the  
25 Harris County Republican Party for documents responsive to

1 Request Numbers 1 and 3, including documents that would have  
2 come from Mr. Vera. That included emails that were sent by  
3 Mr. Vera to legislators, many of which were produced.

4           On those emails when he reached out to legislators at  
5 the initiative of the Harris County Republican Party or on his  
6 own initiative, he copied or otherwise included members of the  
7 Harris County Republican Party at their official email  
8 accounts on those communications.

9           I just want to sharpen what the dispute is about here  
10 in this particular motion. There are two categories of  
11 communications involving Mr. Vera, those that Mr. Vera  
12 initiated with the legislature on behalf of the Harris County  
13 Republican Party, and those that he sent to individual  
14 legislators in response to their requests.

15           So we searched and located those emails that he had  
16 sent on behalf of the Harris County Republican Party. We  
17 produced those and those were at issue and subject to his  
18 testimony in the deposition. He was asked about them. He  
19 gave answers about them. We didn't object to him discussing  
20 those.

21           And to the extent that those were emails that he  
22 initiated and were not initiated by legislators, there was no  
23 objection and he went ahead and he testified about those  
24 particular documents. So we've already produced those  
25 documents. We've allowed him to testify about those

1 documents.

2           So we did conduct a search for responsive documents,  
3 not only emails but also hard copy documents. There were no  
4 responsive hard copy documents but we did search for those,  
5 including those over which Mr. Vera would have been the  
6 custodian.

7           THE COURT: Okay.

8           MR. GORE: So the dispute here --

9           THE COURT: So what I was going to say is -- so that  
10 was helpful background.

11           Now, my understanding of the allegations in the  
12 motion to compel are that Mr. Vera was acting as the agent for  
13 the Harris County Republican Party in this SB 1 drafting  
14 process and fielding questions on behalf of the Harris County  
15 Republican Party to the legislators. So he was acting as your  
16 agent, is that true?

17           MR. GORE: It's true in part.

18           THE COURT: Okay. Thank you.

19           *(Crosstalk)*

20           THE COURT: This will go a lot faster if we just  
21 answers questions that I have.

22           So he's acting as your agent and it's my  
23 understanding that he's using his personal email address and  
24 his personal computer because he doesn't have or hasn't been  
25 given by the Harris County Republican Party one of its

1 computers or a Harris County Republican Party email address,  
2 is that correct?

3 MR. GORE: That is correct in part, yes.

4 THE COURT: Okay. "In part." How can that be in  
5 part?

6 MR. GORE: Well, it is correct to the extent that he  
7 is actually acting on behalf of the Harris County Republican  
8 Party. And when he sends emails on behalf of the Harris  
9 County Republican Party, he copies the chair or other  
10 individuals at their committee email addresses, and those are  
11 the emails we searched for, collected, reviewed, and produced  
12 to the plaintiffs.

13 THE COURT: Now --

14 MR. GORE: When the legislators are reaching out to  
15 him separately from that, the Harris County Republican Party  
16 is not involved in that. Those legislators were reaching out  
17 to him directly. Harris County Republican Party was not an  
18 intermediary for that, and so in those instances he's not  
19 acting on behalf of the Harris County Republican Party when he  
20 is fielding those questions and responding to questions to him  
21 specifically.

22 THE COURT: So how can you say, though -- so you put  
23 him up as your agent, and so there's an agency when he sends  
24 material, but you are claiming that there's no agency when the  
25 legislators send him questions back? How do you make this

1 artificial distinction about his role?

2 MR. GORE: Because the questions back to him were not  
3 tied to anything he had said on behalf of the Harris County  
4 Republican Party.

5 THE COURT: But the only reason that they are  
6 approaching him is because you-all put him up in the first  
7 instance.

8 MR. GORE: I disagree, Your Honor.

9 Mr. Vera is a known activist and involved in voting  
10 issues. He's involved with other organizations such as the  
11 Texas Election Network, which have no connection to the  
12 Republican Party, and he advocates on their behalf. He serves  
13 on their board, all of which I understand he does from his  
14 personal email.

15 I have to say, I don't represent Mr. Vera, but that's  
16 my understanding as well, and so he has other functions and  
17 other hats that he wears in this space that aren't necessarily  
18 tied to -- or are not tied to the Harris County Republican  
19 Party and aren't exclusively tied to the Harris County  
20 Republican Party.

21 THE COURT: So when you (inaudible) --

22 (Crosstalk)

23 -- the custodian of records, did you make clear that  
24 he was a custodian of records only sometimes and otherwise he  
25 was not a custodian of records?

1 MR. GORE: We made clear that we were searching  
2 official committee email addresses --

3 THE COURT: No. No. No. No. No. We're talking  
4 apples and oranges now, Mr. Gore.

5 What I'm saying is -- or what I'm asking is, you  
6 represented to the parties in this case in initial disclosures  
7 or otherwise that Mr. Vera was an individual with knowledge of  
8 relevant facts and that he was a custodian of records on  
9 behalf of the Harris County Republican Party, did you not?

10 MR. GORE: Yes, and all of those records --

11 THE COURT: And so stop. Again, it will go a whole  
12 lot easier if you just answer the questions that I have.

13 So in that representation, did you say he was only  
14 acting in that capacity sometimes?

15 MR. GORE: No, but we didn't have to say that because  
16 when he does other things that aren't tied to the Harris  
17 County Republican Party he's not a custodian of records for  
18 the Harris County Republican Party.

19 *(Crosstalk)*

20 THE COURT: If you insist on playing this game, I'll  
21 play it too.

22 So with regard to the official agency capacity that  
23 he's doing, my question to you is very direct. Did you or  
24 someone on behalf of the Harris County Republican Party search  
25 his personal computer and personal email addresses for any

1 responsive documents to Requests for Production Numbers 1 or  
2 3?

3 MR. GORE: No, we searched official files and  
4 committee email addresses, disclosed the scope of that search  
5 to the plaintiffs --

6 THE COURT: So without asking --

7 *(Crosstalk)*

8 THE COURT: So without asking him to do that, you  
9 made potentially an incomplete production, and so my question  
10 to you is, you can't sit here as we talk and verify to the  
11 parties and to the Court, pursuant to Rule 26(g), that you  
12 made a complete and adequate review for responsive documents  
13 because there could be documents that he was in his agency  
14 capacity sending to these legislators that he didn't CC some  
15 Harris County Republican Party official, and so there could be  
16 potentially other documents, isn't that correct?

17 MR. GORE: No, I don't believe that is correct  
18 because we --

19 THE COURT: How can you say that?

20 *(Crosstalk)*

21 MR. GORE: -- (inaudible) on behalf of the party.

22 Because when he did send anything on behalf of the  
23 party, he copied officials at the Harris County Republican  
24 Party and those documents have all been collected, searched,  
25 reviewed, and produced and were discussed in his deposition.

1 THE COURT: So but without a review of his computer  
2 and email, you can't represent a full production was made  
3 because there could be communications that he did without a CC  
4 to somebody at the Harris County Office. That is a  
5 possibility that exists out there, is it not?

6 MR. GORE: I don't see how that could be. We have no  
7 evidence that that ever happened. What we have is him copying  
8 people and we don't represent him in his personal capacity.

9 He has other associations, including attorney-client  
10 relationships with his attorneys in other cases. He's got an  
11 association with an organization, at least one organization  
12 that's not affiliated with the Harris County Republican Party.

13 So his personal email account is not within our  
14 custody and control, particularly when he's acting as an agent  
15 of the legislature and responding to legislative inquiries  
16 that are directed at him.

17 Those inquiries were not directed at the Harris  
18 County Republican Party. They weren't directed at the chair.  
19 They weren't directed at the party as an organization. They  
20 were directed as to Vera. And when he acts in that capacity,  
21 he's not acting in the capacity of the Harris County  
22 Republican Party. He's acting --

23 THE COURT: In the 30(b)(6) deposition that was taken  
24 of the Harris County Republican Party, your 30(b)(6)  
25 representative stated that he was acting as your agent.



1 MR. GORE: And he did act as our agent in --

2 THE COURT: So if he was acting as your agent, why  
3 didn't you have an obligation under Rule 26(g) to look at his  
4 computer to ensure for yourself that all responsive documents,  
5 even if you want to parse it the way you do, didn't you have a  
6 responsibility to go through his computer to search for  
7 responsive emails and other documents because he was your  
8 agent? Why didn't you -- even the way you are parsing it, why  
9 didn't you do that?

10 MR. GORE: Because such a search would not have been  
11 reasonably calculated to discover discoverable information and  
12 would have been unduly burdensome on the parties and on  
13 Mr. Vera, because this is Mr. Vera's personal email that he  
14 uses for a variety of functions that have nothing to do with  
15 the Harris County Republican Party, and it is his practice to  
16 share those official communications with members of the Harris  
17 County Republican Party. And in light of those facts, there  
18 was no reason to go to Mr. Vera's personal email account and  
19 try to find additional communications --

20 THE COURT: Did you even ask him, can we do this, to  
21 even get him to say that this would be intrusive on me?

22 MR. GORE: We discussed it with Mr. Vera and he did  
23 not want us to do it.

24 THE COURT: And then why didn't you just, even if you  
25 weren't going to make the inspection, why didn't you ask him

1 to self-collect?

2 MR. GORE: Because the facts as we knew them showed  
3 that that would be unreasonable and unduly burdensome in the  
4 circumstances --

5 THE COURT: So you produced 61 documents. How would  
6 that be unduly burdensome for him to self-collect whatever he  
7 had? If indeed you're correct and it's only 61 documents, how  
8 is that unduly burdensome?

9 MR. GORE: I don't know how many documents Mr. Vera  
10 would have to search. We produced 61 documents from our  
11 files, but in terms of whether and what the search would  
12 burden Mr. Vera to do and how he would disentangle email  
13 communications that he initiated from those that he sent in  
14 response to a legislative initiative, or initiation, which is  
15 what the legislative privilege assertion was all about, that  
16 was not possible for him necessarily to decouple.

17 Moreover, as I said, he's got mounds of personal  
18 email on things that don't have anything to do with the Harris  
19 County Republican Party, but that maybe on search terms that  
20 are related to the plaintiffs' requests.

21 THE COURT: The bottom line is no one even tried to  
22 do so. No one tried to do search terms. No one did any kind  
23 of attempt to see how burdensome, if any. That's the bottom  
24 line, isn't that true, Mr. Gore?

25 MR. GORE: I think the bottom line is that we

1 conducted a reasonable search of our files, produced  
2 documents, but didn't hear anything about Mr. Vera's personal  
3 email account until February 27th, which was four days before  
4 the close of discovery.

5 THE COURT: But you had an obligation. You've had an  
6 obligation under Rule 26(g) to produce responsive documents  
7 and search for those, and if he was acting as your agent, as  
8 your 30(b)(6) representative states, then you failed in that  
9 obligation.

10 MR. GORE: Our obligation, Your Honor, was to conduct  
11 a reasonable search for responsive documents that was  
12 proportionate to the needs of the case and not unduly  
13 burdensome.

14 THE COURT: And the Court finds that you failed under  
15 Rule 26(g) to do that reasonable search.

16 Now, with that, we are going to redepose Mr. Vera.  
17 He's not going to be able to assert any legislative privilege  
18 assertion. The Court's already ruled I don't know how many  
19 times on that. I'm not going to allow any further meritless  
20 objections to be lodged.

21 He's to fully, and frankly, and honestly answer all  
22 questions posed to him in that regard between communications  
23 between him and the legislators. Any lawyer and Mr. Vera who  
24 does assert that privilege, despite now my clear directions,  
25 will be held in contempt of court.

1           Now --

2           MR. HILTON: Your Honor, may I address one more issue  
3 related to that motion before we move on to the other matters?

4           THE COURT: Yes.

5           MR. HILTON: Thank you, Your Honor.

6           We'd be happy to do this in writing, if that would be  
7 more convenient for the Court, but I thought I would at least  
8 say now that we respectfully request that the Court move to  
9 stay its ruling that it just made on this motion to compel.

10          THE COURT: Denied.

11          MR. HILTON: Thank you, Your Honor.

12          THE COURT: So now, with that, I want to focus now on  
13 what to do with Mr. Vera, in light of this hybrid role that  
14 Mr. Gore is alleging he engages in.

15          Now, I will agree with Mr. Gore. So I don't know who  
16 Mr. Vera is, but if he's working for other clients on other  
17 matters, then he shouldn't be required to produce something  
18 like that, and so what's the plaintiffs' position on that?

19          Are you going to send him a subpoena, pursuant to a  
20 third-party subpoena, or are you going to still demand a  
21 ruling from this Court on whether or not the Harris County  
22 Republican Party has possession, custody, or control regarding  
23 his devices?

24          MISS PERALES: Your Honor, we are happy to double up  
25 with a subpoena, but what Mr. Gore is saying is not borne out

1 by Mr. Vera's testimony. First of all, Mr. Vera doesn't have  
2 any other clients; he's not an attorney. Every time he  
3 testified --

4 THE COURT: Is he a lobbyist?

5 MISS PERALES: He's a lobbyist for the Harris County  
6 Republican Party.

7 THE COURT: But does he have any other clients that  
8 he's a lobbyist for?

9 MISS PERALES: He did not testify that he did, or  
10 given that the questioning was limited as to SB 1, he never  
11 testified that he had any other person on whose behalf he was  
12 interacting with the legislator.

13 This is a whole new thing that we are hearing today  
14 and so I would ask the Court to make clear in its order that  
15 unless there's a communication in which Mr. Vera made clear in  
16 writing that he was interacting on behalf of somebody other  
17 than the Harris County Republican Party that he should have to  
18 produce it.

19 Every testimony -- every time he testified -- and  
20 Mr. Gore is right, Mr. Vera testified many times and  
21 interacted with the legislature many times on SB 1. Every  
22 time he signed up to register and testify, he did so on behalf  
23 of the Harris County Republican Party Ballot Security  
24 Committee, whether it was HB 6, SB 1, HB 3, or SB 7. It was  
25 always on behalf of the Harris County Republican Party.

1           Furthermore, Your Honor, I would ask the Court to  
2 clarify its order that Mr. Gore and his counsel are not to  
3 limit their documents.

4           THE COURT: You are talking about Mr. Vera?

5           MISS PERALES: I'm sorry. That Mr. Vera should not  
6 limit his document search to emails with the legislator in  
7 which he CC'd party officials. It is not the case that  
8 Mr. Vera testified that he CC'd party officials when he  
9 interacted with legislators.

10           In fact, he testified he interacted with legislators  
11 many times and all we've received from Mr. Gore and his team  
12 were less than seven documents. That 61 mostly was  
13 interaction with the Secretary of State. With respect to  
14 legislators, less than seven documents in the total production  
15 in response to Request for Production Number 1, which  
16 purported to represent their communications with legislators  
17 on SB 1.

18           That's because they only produced what they found in  
19 party, official party email addresses, so when the party chair  
20 was CC'd. But given Mr. Vera's testimony that he interacted  
21 many times and used his personal email, with the very small  
22 handful of documents that we received, we would not want the  
23 Court's order to be understood that the search for documents  
24 should only be those which Mr. Vera CC'd a party official  
25 because we understand from his testimony he had a considerable

1 number of interactions which he did not CC party officials.

2 THE COURT: Yeah. No, the Request for Productions 1  
3 and 3 doesn't say and limit the email communications or  
4 documents were CC'd to anybody. So the Requests for  
5 Productions 1 and 3 are very clear.

6 And so Mr. Vera is ordered, upon penalty of contempt,  
7 to produce any documents that he has — and so we can fight  
8 about possession, custody, and control, and whether or not  
9 this is a legal right jurisdiction, or this is a practical  
10 ability jurisdiction, or whether or not this has to be done by  
11 a third-party subpoena.

12 When you redepose him, the easiest way to tackle this  
13 is just depose him in his individual capacity and require a  
14 duces tecum for Requests of Productions 1 and 3.

15 And I expect Mr. Vera to search for documents  
16 responsive to 1 and 3, regardless of whether they were CC'd to  
17 party officials. And if there's not a reasonable compliance,  
18 pursuant to Rule 26(g) on that subpoena, I will issue sanction  
19 orders against anybody and everybody responsible for the  
20 failure to responsibly produce those documents.

21 This is my last warning to you-all. I am tired of  
22 this case coming up with these meritless objections, delays,  
23 obfuscation. This is just nonsense. That's going to stop and  
24 it's going to stop today.

25 And from here on out, lawyers and individuals will be

1 held in contempt of court for failure to abide by my orders.  
2 I don't know how to make it any more direct than that. And it  
3 will go up the food chain, so you can tell that to your office  
4 as well.

5 So that takes care of Vera.

6 The scheduling order.

7 So what I see is still much discovery left to do in  
8 this case, and so how do we conduct the remaining discovery  
9 and how do we do so in a manner that's as nonintrusive as  
10 possible on the poor election officials that have been drug  
11 into this thing?

12 Miss Perales.

13 MISS PERALES: Your Honor, I believe Miss Yun is here  
14 to speak on the parties' joint submission regarding the  
15 schedule, if it's okay with the court.

16 THE COURT: So you know, I'm not going to go into  
17 this detail again about -- because my observations about the  
18 scheduling order; you-all agreed to that language. That was  
19 your language in the scheduling order. And now both of  
20 you-all, all of you-all, don't understand what you-all wrote  
21 and you want me to rewrite it or clarify it. I'm having none  
22 of it. I'm having none of it anymore.

23 This is going to be opened up for discovery for the  
24 full gamut of relevant proportional discovery, whether it's  
25 for primary information, for general election information.



1 I'm not going to play your games anymore. I'm not going to  
2 get drug into these fights anymore.

3 Now, I want to do this, though, in a way that's as  
4 nonintrusive as possible on the election offices.

5 So how are we going forward?

6 MISS YUN: Your Honor, Jennifer Yun, on behalf of the  
7 United States.

8 So there are two live issues here, and, one, whether  
9 relevant materials that were created or published or disclosed  
10 after the primary election discovery period are discoverable  
11 during this discovery period.

12 THE COURT: So I'm telling you it is. So what I'm  
13 asking of you-all is how much more time do you need? Where do  
14 you need this stuff from? And how are we going to make this  
15 as unobtrusive upon the election officials?

16 MISS YUN: Yes, Your Honor.

17 The parties have been engaging in good faith  
18 negotiations to make sure that we are able to complete  
19 discovery as expeditiously as possible.

20 And in terms of the county depositions, we have met  
21 with the El Paso County counsel as well as the Harris County  
22 counsel in order to obviate any need for this Court's  
23 intervention.

24 I'm happy to let the counties speak for themselves,  
25 but that part of the motion for clarification I believe does

1 not require the Court's intervention.

2 And we have also engaged in extensive meet and  
3 confers with the State defendants in order to complete  
4 depositions of newly disclosed witnesses into April. That  
5 agreement, I do not believe, is fully agreed upon but we are  
6 negotiating that in order to not involve the Court's -- in  
7 order to not ask for the Court's intervention.

8 THE COURT: So all these depositions, especially of  
9 the election officials, I want to focus on them because they  
10 are getting drug into this.

11 So how many times have they already been deposed?  
12 What kind of new questions do you have for them that you need  
13 and do they have to take?

14 And you-all seem to be fighting over hours and  
15 minutes that people need to be deposed. Again, I'm here to  
16 tell you-all, I'm sick and tired of this. I am not going to  
17 be intervening in all this little minutia that good lawyers --  
18 and there are good lawyers in this case -- should resolve.

19 And so let's backtrack a little bit. Why do you need  
20 these election officials to be deposed yet again?

21 MISS YUN: Your Honor, just to clarify, are you  
22 asking about the Secretary of State's officials?

23 THE COURT: No, I don't care about them. I'm worried  
24 about Bexar County, Harris County, El Paso, everybody else on  
25 the Zoom, why are we --

1           MISS EISNER: Apologies, Your Honor. I can speak for  
2 the El Paso Elections Administrator and the deposition issue.

3           We have reached agreement on that issue, and so we're  
4 prepared to file a stipulation. We were just making sure  
5 everybody was going to sign on, but we had a meet and confer  
6 and we have agreed to both the breadth and scope of the  
7 deposition. So I think we can take that off the table.

8           THE COURT: Who else from an elections office thinks  
9 they need relief here?

10          MR. FOMBONNE: Judge, Jonathan Fombonne from the  
11 Harris County Attorney's Office for the Harris County  
12 Elections Administrator.

13          I don't think we need relief. I sent an email  
14 yesterday to all the counsel in this case asking for  
15 confirmation of what I think is our understanding about the  
16 Harris County Elections Administrator's 30(b)(6) deposition.

17          I have only received confirmation from one of the  
18 plaintiffs' counsel and nobody else. If folks would be  
19 willing to respond to that email, I think we have an agreement  
20 and we don't need the Court's intervention.

21          THE COURT: Is everybody on board now with Harris  
22 County or not? So instead of nods, I want a yes or a no.

23          MISS YUN: The United States is okay with Harris  
24 County, our negotiation with Harris County and agreement with  
25 Harris County.

1 MR. DOLLING: OCA plaintiffs agree with the agreement  
2 that Harris County sent out in the email a few days ago.

3 MISS PERALES: Same for the LUPE plaintiffs, Your  
4 Honor.

5 THE COURT: I think you have relief, Harris County.

6 MR. FOMBONNE: Thank you.

7 THE COURT: Anybody else?

8 MR. NELSON: Yes, Your Honor.

9 With respect to Travis County -- and again this is  
10 Tony Nelson, Assistant Travis County Attorney -- we spoke with  
11 counsel for the consolidated plaintiffs who had issued a  
12 subpoena for a second 30(b)(6) deposition of the Travis County  
13 Clerk's Office and counsel agreed that we would revisit those  
14 issues following the outcome of this hearing, that it would  
15 make more sense to do so.

16 We have not spoken again on that today but I would  
17 presume that we should be able to work something out that  
18 would be along the same lines as what has been agreed to with  
19 respect to El Paso and Harris County.

20 THE COURT: Thank you.

21 Any other counties?

22 So with regard to the depositions of any county  
23 officials, you know, I expect it just to be relevant,  
24 nonredundant, and as unobtrusive as possible.

25 Now, once we get all those depositions finished, how

1 much more do we have? Who else is left?

2 MISS YUN: We have two depositions scheduled with the  
3 Secretary of State's Office for next week, and then there are  
4 also various newly disclosed witnesses that will be deposed  
5 but we are in the middle of negotiating those out-of-time  
6 depositions with the State, but we do not --

7 THE COURT: Well, now that I'm vacating the  
8 scheduling order they are not out of time. So then what I'm  
9 hearing is there's a lot of work left to do, is what I'm  
10 hearing.

11 MISS YUN: Your Honor, we believe the agreement is  
12 not -- we have not fully agreed yet but we believe that we can  
13 finish all depositions by April 7th. That is the date that we  
14 have been discussing with all the parties thus far. It is not  
15 yet finalized.

16 THE COURT: And let me stop there.

17 The State, do you have anymore discovery to do, or  
18 are you done?

19 MR. HILTON: We do have some discovery to do. I  
20 think, as Miss Yun mentioned, we are going to work out the  
21 issues we have with respect to newly disclosed witnesses and  
22 I'm certain that whatever issue arises with anything we need  
23 from the counties, we will be able to work that out as well.

24 You know, with the Court's ruling with respect to the  
25 scope of the discovery, which was one of the two issues teed

1 up in the joint motion, that's what gives me pause about  
2 questioning whether we can actually deal with it in the time  
3 frame that we've been discussing.

4 THE COURT: I'm going to vacate the current  
5 scheduling order.

6 So what I'm hearing is I'm going to turn over to you  
7 to come up with a new scheduling order, but again, I'm not  
8 going to go into the trap of the tiering and the phasing that  
9 you-all did that fell apart. We are just going to have a  
10 deadline for completion of discovery.

11 And then we are going to have a deadline for — I'm  
12 assuming there's going to be — what we are all aiming for is  
13 either cross-motions for summary judgment or trial, are we  
14 not?

15 And so I don't know how, with the current scheduling  
16 order, which is why I'm vacating it, we are ever going to get  
17 to timely cross-motions for summary judgment being filed,  
18 responded to, replied, and being ruled upon. The time lines  
19 now are completely untenable, in light of all the discovery  
20 fights.

21 So I'm going to put the onus on you. I'm going to  
22 have my clerk, law clerk, send to you-all what I want down as  
23 a new scheduling order. And you-all are going to meet and  
24 confer and fill in the blanks for the deadlines.

25 If you can't submit to me an agreed new scheduling

1 order, then you're going to submit to me on a party basis what  
2 you think the scheduling order should be, and then I will just  
3 be forced to fill in the blanks for you-all if you can't reach  
4 resolution on that.

5 Now, where are we headed with this case? Is it going  
6 to be resolved one way or the other on cross-motions for  
7 summary judgment? Does it make sense to even have  
8 cross-motions for summary judgment, or do we just, in lieu of  
9 the tedium and expense and everything else of cross-motions  
10 for summary judgment, have a bench trial?

11 What's the plaintiffs' position on that?

12 MISS YUN: Your Honor, the United States does not  
13 believe any summary judgment deadlines or the trial, pretrial  
14 deadlines need to be moved at this time.

15 And we believe that --

16 THE COURT: Well, I've already said otherwise, so  
17 move on to what I was asking.

18 MISS YUN: We believe that dispositive motions will  
19 be helpful and that we hope to resolve at least some of the  
20 claims before trial through dispositive motions.

21 MR. HILTON: I would generally agree with that, Your  
22 Honor. I can't imagine that the entire case will be disposed  
23 of before trial, just given the scope of it, but I think that  
24 certainly some of the issues could be narrowed on dispositive  
25 motion briefing.

1 THE COURT: So we have cross-motions for summary  
2 judgment, one way or the other the issues get disposed of  
3 maybe in part and so the remainder is a bench trial?

4 MR. HILTON: I think that's right, Your Honor, from  
5 the State's perspective.

6 MISS YUN: We agree, Your Honor.

7 THE COURT: And then in light of some parties have  
8 been dropping like flies here, and so I'm assuming does that  
9 mean some of the issues have been narrowed, or not, or are we  
10 just losing parties?

11 MISS PERALES: I don't speak for all consolidated  
12 plaintiffs but I will say, Your Honor, that from time to time  
13 a party finds itself unable to proceed because of the burdens  
14 of litigation. The changes in the parties that are  
15 participating have not narrowed the issues before the Court.

16 THE COURT: And so as I'm thinking out loud on all of  
17 this, one thing that will not be included in the new  
18 scheduling order is a new amendment of pleadings. We are  
19 staying put on what's been pled to date. We are not opening  
20 up this file anymore.

21 Okay. With all that said then, what else do we need  
22 to talk about today, Miss Perales, or from the U.S.  
23 Government? I don't care who goes first.

24 MISS YUN: Your Honor, there is one issue in the  
25 motion for clarification regarding the two depositions that we



1 noticed with regards to the Secretary of State's Office.

2 We believe that the default federal rule of seven  
3 hours per deposition should apply to those two depositions.  
4 The State defendants do not agree, so we were hoping to raise  
5 that.

6 THE COURT: And so why should there be preemptive  
7 limits?

8 MR. HILTON: It's two depositions of the same witness  
9 who has already been deposed twice before. They are unwilling  
10 to concede that it can be limited to anything less than the  
11 full 14 hours for both his individual and 30(b)(6) capacity.  
12 We've proposed nine hours spread over those two depositions.

13 I understand the Court's position on relative burdens  
14 on the State versus the county defendants, but the fact of the  
15 matter is this witness, Mr. Ingram, is incredibly busy helping  
16 those counties try to run their elections, and so -- and we  
17 think we have proposed a reasonable alternative, but, you  
18 know, that's for the Court to decide whether you want to weigh  
19 into that or not.

20 THE COURT: So these other depositions that he's  
21 given, has it been in this case or other cases?

22 MR. HILTON: In this case, Your Honor, in addition to  
23 many depositions in many other cases. He sometimes feels like  
24 he gets deposed more than he actually works his job, but  
25 that's obviously not the Court's problem, but these would be

1 his third and fourth depositions in this case.

2 THE COURT: So how is it that nine hours is not  
3 enough?

4 MISS YUN: Your Honor, while Mr. Ingram may be the  
5 State's only 30(b) (6) witness, we actually do not know that  
6 that is to be the case so we do not want to preemptively limit  
7 the amount of time that we have across those two depositions.

8 Of course, we are going to be very respectful of  
9 Mr. Ingram's time and want to be as efficient as possible. We  
10 were not saying that we have to take 14 hours. It is just  
11 that we do not know how long it will take and that a  
12 preemptive limit is not warranted here.

13 THE COURT: So with regard to Mr. Ingram, it's  
14 limited to nine hours of Mr. Ingram.

15 However, in the event in his 30(b) (6) capacity  
16 Mr. Ingram is unable to answer some question, that nine-hour  
17 limit will not apply to any additional 30(b) (6) representative  
18 that the State may need to proffer to answer questions that  
19 Mr. Ingram is unable to answer.

20 MISS YUN: Thank you.

21 THE COURT: What else do we need to take up?

22 So you win one today.

23 MR. HILTON: Thank you, Your Honor.

24 MR. STOOL: Judge, this is Ben Stool from Dallas  
25 County, Texas.

1 THE COURT: Yes, sir.

2 MR. STOOL: If I may ask as a point of clarification,  
3 in the Court's vacating the current scheduling order, which I  
4 take it to be ECF 437, is the Court opening up the county  
5 defendants to newly served written discovery from the other  
6 parties? Because it's essentially closed at this point.

7 THE COURT: So, yeah, thank you for that very good  
8 question.

9 When I was talking out loud I was thinking about,  
10 with the exception of Mr. Vera, that we have document  
11 problems, and I guess we still have document problems from the  
12 State that the Fifth Circuit -- is the Fifth Circuit ever  
13 going to rule? Have they had a hearing? They have had a  
14 hearing.

15 MR. HILTON: On the legislative privilege issue, Your  
16 Honor, they have had argument. It's been fully submitted for  
17 months, as I understand it.

18 MISS PERALES: Since August, Your Honor.

19 MR. HILTON: So we are all waiting eagerly.

20 THE COURT: They had oral argument in August?

21 MISS PERALES: Yes, Your Honor. They held oral  
22 argument in August.

23 THE COURT: Wow.

24 MISS PERALES: August 2nd.

25 MR. HILTON: And just to clarify, because they

1 haven't ruled, that's why we have -- you know, I previously  
2 moved the Court to stay its ruling with respect to the motion  
3 to compel. So we are waiting for the Fifth Circuit.

4 THE COURT: Again, now the reason I'm cutting it this  
5 way is the State has a different argument on the legislative  
6 privilege.

7 Their argument, and unless you've argued it  
8 differently upstairs, which you have done, and so somehow or  
9 another arguments not presented to me get to go to the Fifth  
10 Circuit somehow and get ruled on, despite me never having the  
11 opportunity in the first instance, but your argument before me  
12 was the fact that a document is actually seen, smelled,  
13 whiffed by, opened by a legislator, made it subject to the  
14 legislative privilege.

15 The reason the legislative privilege does not apply  
16 to Mr. Vera is, one, it hasn't been asserted to by any  
17 legislator; two, these are broken by waiver because Mr. Vera  
18 is not a staffer employed by that legislator and the  
19 legislative privilege applies only to the legislator staff  
20 relationship. And so just like any other attorney-client  
21 document, once you start showing documents to third parties  
22 that's been waived.

23 So the arguments here are completely different than  
24 the arguments advanced to me on the legislative privilege.

25 And again, if Mr. Vera does not produce and not talk

1 about all of this, heads will roll.

2 MR. HILTON: I certainly understand the Court's  
3 ruling in that regard, you know, and we'll take whatever  
4 appropriate action we think we need to take with respect to  
5 that.

6 THE COURT: It's called more delay in discovery of  
7 this case.

8 MR. HILTON: Well, I would just add that on appeal my  
9 understanding is that there are also individual legislators  
10 who have consolidated appeals who have, you know, slightly  
11 different arguments. So with respect to legislative  
12 privilege, there's a lot that we are waiting on, but  
13 regardless, we understand the Court's ruling.

14 THE COURT: So let's go back to Mr. Stool's excellent  
15 question.

16 I was thinking that there was going to be depositions  
17 of these individuals but no longer anymore -- now, apart from  
18 the State, I'm talking about burdens on the county election  
19 officials. I was under the impression that this was just  
20 depositions, not placing additional discovery production  
21 burdens on any county election officials, or are you thinking  
22 otherwise?

23 MISS PERALES: Your Honor, there is current discovery  
24 outstanding. Because of the Court's current scheduling order,  
25 there is discovery that has been served on counties.

1           And in fact, Mr. Stool and I are setting up a meet  
2 and confer about document production from Dallas County before  
3 the deadline, which is 30 days out from when we served it, and  
4 within the Court's now vacated scheduling order.

5           So I would only want to make clear that if Mr. Stool  
6 is asking as to newly propounded discovery versus that  
7 discovery that we are still waiting to come in from the  
8 counties.

9           THE COURT: So, Mr. Stool, with regard to the request  
10 for production that has been currently propounded upon your  
11 office or other offices, are you objecting to producing the  
12 current request?

13           MR. STOOL: Not all of it, Your Honor.

14           There's -- we -- Miss Perales and I do have -- we are  
15 going to set up a meet and confer about the specifics of it  
16 because Dallas County had been relying on the Court's previous  
17 amended scheduling order and its limitation on the scope of  
18 the discovery to the November 2022 general election that  
19 was -- your previous order had been very clear that --

20           THE COURT: Yeah. Well, that part, Mr. Stool, I'm  
21 vacating.

22           MR. STOOL: I understand that, so I will certainly,  
23 we will take that into account when Miss Perales and I meet  
24 and confer about that. So, no, we just -- I mostly wanted to  
25 make sure we are not going to being subject to anymore written

1 discovery requests from the parties.

2 THE COURT: I got you.

3 So with regard to the county election officials, any  
4 request for production that have been currently propounded and  
5 outstanding, the parties are to -- well, the plaintiffs and  
6 the county officials are to meet and confer about any  
7 objections, burdensome, oppressive kind of arguments and try  
8 to reach resolution.

9 But in an effort to protect the county election  
10 officials from any further discovery, the new scheduling order  
11 that will be entered will not permit the additional  
12 propounding of discovery on the county election officials  
13 unless it's acquiesced to and agreed to by that county office.

14 Does that make sense?

15 MISS YUN: Yes, Your Honor.

16 MR. STOOL: Yes, sir.

17 MR. HILTON: Apologies for being the slowest one in  
18 the room. I just want to clarify, you know, your ruling with  
19 respect to the scope of discovery.

20 I understand it with respect to the private-party  
21 plaintiffs, the United States, and with the State. You are  
22 removing any scope limitations for the new discovery period?

23 THE COURT: Well, it still has to be relevant. It  
24 still has to be proportional. And it's got to be  
25 nonprivileged.

1           MR. HILTON: Of course. Does that ruling not apply  
2 to the county defendants, or does that ruling also apply to  
3 the county defendants?

4           And the reason I ask is that the currently, you know,  
5 currently propounded discovery we all issued under the  
6 assumption that the scope of discovery -- you know, the old  
7 scope of discovery applied. I could foresee a situation where  
8 the Court has incomplete information if the scope is not the  
9 same and we don't have the ability to address that.

10           Maybe I'm getting too hypothetical with it but that  
11 was my question.

12           THE COURT: Well, my understanding of what's been  
13 going on with that scope is that there's arguments that -- and  
14 I'm not saying that they are correct -- but the arguments are  
15 that the State has not fully complied or it's delayed  
16 production, and so it's all still hanging out there.

17           And so I don't want to be dealing with what was in  
18 scope, what was out of scope. Scope is 26(b)(1), relevant,  
19 proportional, and nonprivileged. And so I don't want to deal  
20 with your fights.

21           MR. HILTON: Understood.

22           THE COURT: Anything else we need to take up today?

23           MISS YUN: Your Honor, will the Court set a deadline  
24 for the joint scheduling proposal that we are supposed to  
25 submit?



1 THE COURT: You will have 14 days. My law clerk will  
2 get it out to you today or tomorrow and you have 14 days from  
3 receipt of that email to either get me an agreed to or  
4 individual submissions.

5 MISS YUN: Thank you, Your Honor.

6 THE COURT: Anything else we need to do today?

7 MISS PERALES: Not for plaintiffs, Your Honor.

8 MR. HILTON: Nothing from the State, Your Honor.

9 THE COURT: So I sure hope we don't have anymore  
10 discovery fights because I'll be mad.

11 You know, the last time we were here regarding the  
12 Harris County Republican Party, Mr. Vera -- I don't remember  
13 who the lawyer was here. I guess it was Mr. Gore. My  
14 question or comment, "Okay. So then I'm hearing from you" --  
15 this is all back in what? November '22? Yeah. November  
16 14th.

17 "Okay. So then I'm hearing from you that you are  
18 going to produce all documents responsive to Request for  
19 Production Number 1 without objection and without any  
20 assertion of privileges by December 1, is that what I'm  
21 hearing?" "Yes, Your Honor."

22 And then after we had discussions about the  
23 similarity between Number 1 and Number 3, I said, "So I expect  
24 Number 3 is going to be fully complied with by December 1,"  
25 and we didn't get any of this slicing and dicing legislative

1 privilege.

2 And so after 20 years on the bench, I guess you just  
3 get a smell test about who is not playing well in the sandbox,  
4 and so whoever doesn't play well in the sandbox next time will  
5 find themselves in deeper trouble than being deprived recess.

6 We're adjourned.

7 *(Concludes proceedings)*

8 -o0o-

9 I certify that the foregoing is a correct transcript from  
10 the record of proceedings in the above-entitled matter. I  
11 further certify that the transcript fees and format comply  
12 with those prescribed by the Court and the Judicial Conference  
13 of the United States.

14

15 Date: 03/10/23

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